

Message Text

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APPROVED BY OES/OFA - MR. NAKATSU

L/OES - COLSON

EA/J - ECTON

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO IMMEDIATE

AMEMBASSY MADRID IMMEDIATE

C O N F I D E N T I A L STATE 296667

MADRID - PASS TO AMB. RIDGWAY, US ICNAF DELEGATION

E.O. 11652: GDS

TAGS: EFIS

SUBJECT: U.S./JAPAN GIFA NEGOTIATIONS

1) SUMMARY: ON FRIDAY, DECEMBER 3, GOJ EMBASSY REPS
PASSED TO DEPT. GOJ DRAFTS OF GIFA AND INTERIM ARRANGEMENT.
GOJ EMBOFF SUBMITTED DRAFTS ON THE UNDERSTANDING THAT DECISION
HAD NOT YET BEEN TAKEN AT HIGHEST LEVEL OF GOJ TO FOLLOW
THIS COURSE. DEPT'S FIRST REVIEW OF DRAFT GIFA TEXT INDICATES
THAT FOR THE MOST PART, THE TEXT IS ACCEPTABLE; WITH MAJOR
DIFFICULTIES BEING IN THE ANADROMOUS SPECIES, BILLFISH AND
MARINE MAMMAL ISSUES. INTERIM ARRANGEMENT IS A FIVE-PARAGRAPH
PRINCIPLES APPROACH WHICH CONTEMPLATES A TECHNICAL ANNEX.
DEPT. UNDERTOOK TO PROVIDE GOJ EMBASSY PRELIMINARY COMMENTS
BY FRIDAY, DEC. 10. END SUMMARY.

2) GOJ EMBOFFS MET WITH COLSON AND NAKATSU TO PRESENT
TEXTS AND TO PROVIDE GOJ COMMENTS. GOJ EMBOFFS STATED THAT
DRAFTS WERE SUBMITTED ON CONDITION THAT USG UNDERSTOOD THAT
BASIC POLICY DECISIONS HAD NOT YET BEEN TAKEN WITHIN GOJ.
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INFORMALLY, GOJ EMBOFFS EXPRESSED DOUBT THAT SUCH DECISION
WOULD BE TAKEN BEFORE GOJ DELEGATION LEAVES FOR WASHINGTON.

3) EMBOFFS STATED THAT GOJ BELIEVED THAT INTERIM ARRANGE-

MENT FOLLOWING PRINCIPLES APPROACH OUTLINED IN TOKYO WOULD ONLY LEAD TO HIGHLIGHTING DIFFERENCES BETWEEN USG AND GOJ;

IF PRINCIPLES WERE SET FORTH IN ANY DETAIL. THEREFORE, GOJ BELIEVED THIS APPROACH WOULD CREATE DIFFICULTIES UNLESS IT WAS PUT INTO A VERY SHORT AND RUDIMENTARY FORM. ALSO, GOJ EMBOFFS NOTED THAT SO-CALLED THIRD APPROACH WAS DIFFICULT FOR GOJ BECAUSE OF ITS VAGUENESS AND BECAUSE IT DOES NOT ASSURE CONTINUATION OF GOJ FISHERY OFF U.S. COAST IN 1977. ACCORDINGLY, GOJ EMBOFF SAID THAT GOJ LIKED TECHNICAL APPROACH THE BEST, BUT WOULD TRY TO KEEP THE FORM AS SIMPLE AS POSSIBLE WITH A MINIMUM OF PROVISIONS. SUCH ARRANGEMENT WOULD INCLUDE AN ANNEX WHICH WOULD INCLUDE CATCH QUOTAS AND FISHING AREA AND TIME CLOSURES.

4) GOJ EMBOFF'S NOTED THAT GOJ UNDERSTOOD THAT TECHNICAL PROVISIONS OF SUCH ARRANGEMENT WOULD GIVE USG DIFFICULTIES BECAUSE OF THE U.S. LAWS AND QUOTE UNSTABLE LOCAL AUTHORITIES UNQUOTE. GOJ NOTED THAT IT WOULD BE QUOTE PREPARED TO DEVISE OTHER WAYS OF LOOKING AT DETAILS UNQUOTE IN THE INTERIM ARRANGEMENT.

5) GOJ EMBOFFS COMMENTED ON GIFA AS FOLLOWS: IN PREAMBLE, GOJ MOVED STATEMENT ON LOS MATTERS TO SECOND PARAGRAPH IN THE PREAMBLE. GOJ ALSO INCLUDED NEW GIFA ARTICLE ON ANADROMOUS SPECIES (TEXT BELOW) WHICH WAS DESCRIBED AS CONSISTENT WITH RSNT. GOJ NOTED THAT IT HAD NOT PUT DETAILS INTO WHAT IS ARTICLE X, OF GOJ GIFA (AND IS ARTICLE VIII OF MODEL GIFA). (THEY HAVE LEFT OUT REFERENCE TO TRANSPONDERS AND AGENTS FOR SERVICE OF PROCESS.) GOJ INCLUDED ARTICLE ON PORT CALLS, SAYING THAT IT WANTS TO MAKE CLEAR USG ASSURANCE. THE ONLY OTHER POINT GOJ OFFICIALS NOTED WAS THAT COMING INTO FORCE PROVISION IS SET UP SO THAT AGREEMENT COMES INTO FORCE ON DATE TO BE MUTUALLY AGREED THROUGH AN EXCHANGE OF NOTES.

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6) RATHER THA SET OUT ENTIRE TEXT OF PROPOSED DRAFT GIFA AND INTERIM ARRANGEMENT, ONLY THE TEXT OF THE INTERIM ARRANGEMENT, ANADROMOUS SPECIES ARTICLE OF GIFA, AND AGREED MINUTES OF GIFA ARE BEING SET FORTH.

7) BEGIN TEXT OF INTERIM ARRANGEMENT:

EXCELLENCY:

I HAVE THE HONOR TO REFER TO THE RECENT DISCUSSIONS HELD BETWEEN THE REPRESENTATIVES OF THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING FISHERIES MATTERS BETWEEN THE TWO COUNTRIES

AND-TO-CONFIRM ON-BEHALF-OF THE GOVERNMENT OF JAPAN, THE
UNDERSTANDING REACHED-BETWEEN THE TWO GOVERNMENTS THAT WITH

A VIEW TO ESTABLISHING REASONABLE TERMS AND CONDITIONS
PERTAINING TO FISHERIES OF MUTUAL CONCERN OFF THE COASTS
OF THE UNITED STATES OF AMERICA, THE ARRANGEMENT ATTACHED
HERETO WILL BE APPLIED BY THE TWO GOVERNMENTS FOR THE
PERIOD BETWEEN MARCH 1, 1977 AND (DECEMBER 31, 1977/
FEBRUARY 28, 1978).

I HAVE FURTHER THE HONOR TO PROPOSE THAT THIS NOTE AND
YOUR EXCELLENCY'S NOTE IN REPLY CONFIRMING THE ABOVE UNDER
STANDING ON BEHALF OF THE GOVERNMENT OF THE UNITED STATES
OF AMERICA SHALL BE REGARDED AS CONSTITUTING AN AGREEMENT
BETWEEN THE TWO GOVERNMENTS.

I AVAIL MYSELF OF THIS OPPORTUNITY TO EXTEND TO YOUR
EXCELLENCY THE ASSURANCE OF MY HIGHEST CONSIDERATION.

ARRANGEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA CONCERNING
FISHERIES OFF THE COASTS OF
THE UNITED STATES

1. THE GOVERNMENT OF JAPAN WILL TAKE NECESSARY MEASURES TO ENSURE THAT THE NATIONALS AND VESSELS OF JAPAN
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WILL NOT ENGAGE IN FISHING, EXCEPT AS PROVIDED IN THE ANNEX
HERETO, FOR LIVING RESOURCES EXCEPT HIGHLY MIGRATORY
SPECIES, ANADROMOUS SPECIES AND SEDENTARY SPECIES IN THE
WATERS WHICH ARE CONTIGUOUS TO THE TERRITORIAL SEA OF THE
UNITED STATES OF AMERICA TO A LIMIT OF TWO HUNDRED NAUTICAL MILES FROM THE BASELINE FROM WHICH THE UNITED STATES
TERRITORIAL SEA IS MEASURED (HEREINAFTER REFERRED TO AS THE
"LIVING RESOURCES OF THE WATERS") OR FOR SEDENTARY SPECIES
ON THE CONTINENTAL SHELF EXTENDING FROM THE UNITED
STATES (HEREINAFTER REFERRED TO AS THE "SEDENTARY SPECIES
ON THE CONTINENTAL SHELF").

2. (1) THE JAPANESE AUTHORITIES WILL PROVIDE THE
AUTHORITIES OF THE UNITED STATES WITH THE NAMES, THE REGISTRATION-NUMBERS, THE NAMES OF THE MANAGERS AND THE NUMBERS
OF THE FISHING CREWS OF ANY JAPANESE VESSELS THAT ARE
LIKELY TO ENGAGE IN FISHING FOR THE LIVING RESOURCES IN
THE WATERS OR FOR THE SEDENTARY SPECIES ON THE CONTINENTAL SHELF.

(2) ON RECEIPT OF THE INFORMATION REFERRED TO IN
SUB-PARAGRAPH (1) OF THIS PARAGRAPH, THE GOVERNMENT OF

THE UNITED STATES WILL MAKE NECESSARY ADMINISTRATIVE
ARRANGEMENTS TO FACILITATE THE OPERATION OF THOSE VESSELS

IN ACCORDANCE WITH THE PROVISIONS OF THIS ARRANGEMENT.

(3) BOTH GOVERNMENTS SHALL HAVE RESPONSIBILITY FOR THE
ENFORCEMENT OF THIS ARRANGEMENT.

(4) UPON THE REQUEST OF EITHER GOVERNMENT, THE TWO
GOVERNMENTS WILL HOLD CONSULTATIONS IN RESPECT OF ANY
MATTER CONCERNING THE IMPLEMENTATION OF THIS ARRANGEMENT.

(5) NOTHING IN THIS ARRANGEMENT SHALL BE DEEMED TO
PREJUDICE THE POSITION OF EITHER GOVERNMENT IN REGARD TO
ANY QUESTION PERTAINING TO THE LAW OF THE SEA. END TEXT

8) BEGIN TEXT OF ANADROMOUS SPECIES ARTICLE OF GIFA:

ARTICLE VI

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(1) FISHERIES FOR ANADROMOUS SPECIES OF THE UNITED
STATES ORIGIN SHALL BE CONDUCTED ONLY IN THE WATERS LAND-
WARDS OF THE OUTER LIMITS OF 200 NAUTICAL MILES FROM THE
BASELINE FROM WHICH THE UNITED STATES TERRITORIAL SEA IS
MEASURED, EXCEPT IN CASES WHERE THE PROVISION WOULD RESULT
IN ECONOMIC DISLOCATION FOR JAPAN. THE GOVERNMENT OF THE
UNITED STATES SHALL COOPERATE IN MINIMIZING THE ECONOMIC
DISLOCATION OF JAPAN, TAKING INTO ACCOUNT THE NORMAL
CATCH AND THE MODE OF OPERATIONS OF THE FISHING VESSELS
OF JAPAN, AND ALL THE AREAS IN WHICH SUCH FISHING HAS
OCCURRED, AND FOR THIS PURPOSE SHALL CONSULT PERIODICALLY
WITH THE GOVERNMENT OF JAPAN WITH A VIEW TO WORKING OUT
THE DETAILS OF IMPLEMENTATION.

(2) ENFORCEMENT REGARDING ANADROMOUS SPECIES OF THE
UNITED STATES ORIGIN BEYOND THE LIMIT OF 200 NAUTICAL
MILES REFERRED TO ABOVE SHALL BE BY AGREEMENT BETWEEN THE
GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE UNITED
STATES. END TEXT.

9) BEGIN TEXT OF AGREED MINUTES OF GIFA:

THE REPRESENTATIVES OF THE GOVERNMENT OF JAPAN AND THE
GOVERNMENT OF THE UNITED STATES HAVE AGREED TO RECORD THE
FOLLOWING IN CONNECTION WITH THE AGREEMENT BETWEEN THE
GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE UNITED STATES
OF AMERICA CONCERNING FISHERIES OFF THE COASTS OF THE
UNITED STATES INITIALED TODAY (HEREINAFTER REFERRED TO
AS THE "AGREEMENT"):

(1) IT IS UNDERSTOOD THAT SUPPLY OF FUELS IN SUPPORT

OF ACTIVITIES DESCRIBED IN ARTICLE II, PARAGRAPH (5)(A) THROUGH (5)(C) OF THE AGREEMENT IS NOT INCLUDED IN "OPERATIONS" DESCRIBED IN ARTICLE II, PARAGRAPH (5)(D) OF THE AGREEMENT AND THAT OIL CARRIERS ARE NOT INCLUDED IN "FISHING VESSEL" DESCRIBED IN ARTICLE II, PARAGRAPH (6) OF THE AGREEMENT.

(2) IT IS UNDERSTOOD THAT WITH RESPECT TO ARTICLE II, PARAGRAPH (7) OF THE AGREEMENT, THE GOVERNMENT OF JAPAN
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WILL PROVIDE THE GOVERNMENT OF THE UNITED STATES WITH STATISTICS ON TUNA AND RELATED CATCHES BY FISHING VESSELS OF JAPAN OFF THE COASTS OF THE UNITED STATES.

(3) IT IS UNDERSTOOD THAT WITH REGARD TO ARTICLE XIII OF THE AGREEMENT, THE APPROPRIATE REPRESENTATIVES OF THE GOVERNMENT OF THE UNITED STATES WILL RECOMMEND TO THE COURT IN ANY CASE OUT OF FISHING ACTIVITIES UNDER THE AGREEMENT THAT THE PENALTY FOR VIOLATION OF FISHERY REGULATIONS NOT INCLUDE IMPRISONMENT OR ANY OTHER FORM OF CORPORAL PUNISHMENT.

(4) IT IS UNDERSTOOD THAT WITH RESPECT TO ANY MATTER DEALT WITH IN THE AGREEMENT WHICH FALLS WITHIN ITS COMPETENCE, THE GOVERNMENT OF JAPAN IS PREPARED TO ACCORD TO NATIONALS AND VESSELS OF THE UNITED STATES WISHING TO ENGAGE IN FISHING FOR LIVING RESOURCES OFF THE COAST OF JAPAN TREATMENT NO LESS FAVORABLE THAN THAT ACCORDED TO NATIONALS AND VESSELS OF JAPAN UNDER THE AGREEMENT IN LIKE SITUATION, ON THE BASIS OF RECIPROCITY. END TEXT.

10) COMMENT: INITIAL REVIEW OF GIFA INDICATES THAT WE ARE VERY CLOSE ON MOST POINTS. GOJ HAS NOT FOUGHT THE FORM NOR THE BASIC PROVISIONS OF THE GIFA. PROBLEMS DO ARISE IN DEFINITION ARTICLE BECAUSE OF ANADROMOUS SPECIES, CONTINENTAL SHELF FISHERY RESOURCES, AND BILLFISH ISSUES. MARINE MAMMAL ARTICLE CONTINUES TO BE A PROBLEM. HOWEVER, THE GOJ HAS ACCEPTED (1) U.S. ENFORCEMENT; (2) REFERENCES TO U.S. AUTHORITY TO MANAGE; (3) REFERENCES TO U.S. PENALTIES; (4) REFERENCES TO QUOTE ADMINISTRATIVE MEASURES, INCLUDING THE ISSUANCE OF PERMITS END QUOTE AND RECOGNIZES THAT FEES MAY BE CHARGED. GOJ TEXT DOES NOT

REFER TO FACT THAT USG MAY CHARGE FEES FOR OBSERVERS NOR DOES IT REFER TO TRANSPONDERS AND AGENTS FOR SERVICE OF PROCESS. HOWEVER, ALL IN ALL GOJ PROPOSED TEXT ACCEPTS IN MOST PLACES USG BRACKETED LANGUAGE OF TEXT WHICH WAS ON TABLE IN AUGUST. IT WILL BE A GOOD STARTING POINT FOR DECEMBER NEGOTIATIONS.

11) PROPOSED TEXT OF INTERIM ARRANGEMENT IS MORE TROUBLE-

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SOME. TEXT AS PRESENTED AND CONTEMPLATED ANNEX WILL BE DIFFICULT FOR USG. IF MAIN GOJ OBJECTION TO SO-CALLED THIRD APPROACH IS THAT IT DOES NOT ASSURE GOJ FISHERY IN 1977, IT MAY BE POSSIBLE TO GIVE GOJ LANGUAGE IN A THIRD APPROACH THAT WILL SATISFY THIS REQUIREMENT. ON THE OTHER HAND, WE MAY HAVE TO BUILD ON GOJ PROPOSAL FOR TECHNICAL AGREEMENT AND LOOK FOR A WAY OUT THAT WILL NOT GIVE USG THE TECHNICAL AND LEGAL DIFFICULTIES THIS APPROACH ENGENDERS. END COMMENT.

12) DEPT. WILL PASS ON PRELIMINARY AND INFORMAL COMMENTS TO GOJ EMBASSY FRIDAY, DEC. 10. GOJ KNOWS THAT THESE COMMENTS WILL NOT HAVE HAD AMB. RIDGWAY'S CONCURRENCE, SINCE SHE IS NOT IN COUNTRY. HOWEVER, DEPT. WOULD APPRECIATE GUIDANCE FROM EMBASSY OR FROM RIDGWAY AS TO THE CONTENT OF OUR PRELIMINARY AND INFORMAL COMMENTS. KISSINGER

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